D.T.E. 04-85 January 7, 2005

Petition of Boston Edison Company and Commonwealth Electric Company, d/b/a/ NSTAR Electric, for Approvals Relating to the Restructuring of Power Purchase Agreements with Northeast Energy Associates Limited Partnership.

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I. INTRODUCTION

On September 29, 2004, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, Boston Edison Company ("Boston Edison") and Commonwealth Electric Company ("Commonwealth"), d/b/a/ NSTAR Electric (jointly "Companies" or "NSTAR Electric") filed with the Department of Telecommunications and Energy ("Department") for approval of (1) a Bellingham execution agreement between the Companies and Northeast Energy Associates Limited Partnership ("NEA"), as amended by the first amendment ("First Amendment") (together "Execution Agreement"), and four associated amended and restated purchase power agreements ("PPAs") (the Execution Agreement and four amended and restated PPAs collectively the "NEA Restructuring"), and (2) ratemaking treatment relating to the NEA Restructuring.

The Companies currently purchase power from NEA's Bellingham, Massachusetts electric generation facility under four PPAs: two PPAs between Boston Edison and NEA, and two PPAs between Commonwealth and NEA. Both Commonwealth PPAs and one of the Boston Edison PPAs run through September 15, 2016, the other Boston Edison PPA runs through September 15, 2011. The Department docketed this matter as D.T.E. 04-85.

II. PROCEDURAL HISTORY

Pursuant to notice duly issued, the Department conducted a public hearing and procedural conference on October 27, 2004. The Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention as of right pursuant to G.L. c. 12, § 11E. On November 16, 2004, NSTAR Electric filed with the Department the

First Amendment. The First Amendment raised the cap on the calculation of closing payments (see Section VI. C, below). The Companies ask the Department to approve the NEA Restructuring, as amended.

The Department conducted an evidentiary hearing on November 18, 2004. The Companies sponsored the testimony of Geoffrey O. Lubbock, vice president, financial strategic planning and policy for NSTAR Electric and Gas Company, and Robert B. Hevert, president of Concentric Energy Advisors, Inc. ("CEA"). The Companies and the Attorney General filed initial briefs on December 3, 2004. On December 10, 2004, the Companies filed a reply brief, and the Attorney General filed a letter in lieu of a reply brief. The evidentiary record includes 156 exhibits and the Companies' responses to eleven record requests.

III. APPEAL OF HEARING OFFICER RULING

On December 9, 2004, the Attorney General filed an appeal ("Appeal")[1] of a December 2, 2004 Hearing Officer Ruling ("Hearing Officer Ruling"). The Hearing Officer Ruling disallowed a supplemental record request issued by the Attorney General on November 29, 2004.[2] The Attorney General characterized the supplemental record request as a clarification the Companies' responses to a previous record request issued during the evidentiary hearing in this matter (Attorney General supplemental record request). As reasons for denying the supplemental record request, the Hearing Officer stated that (1) the

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[1] The Attorney General initially filed a Motion for Reconsideration of the Hearing Officer Ruling, but later withdrew the motion, and filed the instant appeal.

[2] The Attorney General issued the supplemental record request without prior approval from the Hearing Officer. See 220 C.M.R. § 1.11(7).

supplemental record request was not simply a clarification of what had been requested in the hearings, but went beyond what was requested on the transcript, and (2) the Companies already had responded to the record request as posed in the hearing (Hearing Officer Ruling at 1).

In the original record request (RR-AG-3), the Attorney General asked the Companies to compare locational installed capacity ("LICAP") prices in Exhibit AG-1,[3] with LICAP prices included in the Henwood forecast[4] (Tr. at 112). The record request was later amended to include an analysis of the effect of LICAP clearing prices, as contained in Exhibit AG-1, on the value of the existing NEA PPAs should the proposed LICAP prices go into effect (id. at 113-114). The record request was further restated to include the following: (1) replace Henwood's LICAP values with the LICAP values from Exhibit AG-1, identifying the assumptions needed to perform this function, (2) convert all numbers on the basis of dollar-per-kilowatt-hour ("KWH"), (3) include the results in the Companies' above-market

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[3] Exhibit AG-1 is the direct testimony of James G. Daly, of NSTAR Electric, on behalf of the Attorney General, et. al., filed on November 4, 2004, with the Federal Energy Regulatory Commission ("FERC") in Docket No. ER03-563-030. The LICAP mechanism for determining the level of capacity payments to generating resources has been proposed by ISO New England Inc. and, currently, is under review by FERC in Devon Power LLC, et al., Docket Nos. ER03-563-038/EL04-102-001. FERC intends to implement LICAP in New England no later than January 1, 2006. Devon Power LLC, et al., 107 FERC ¶ 61,240 (2004).

[4] The Henwood forecast is an industry-known, independent forecast of key energy variables. The Department has previously approved PPA buyouts where projected customer savings have been based on the Henwood forecast. See Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 26 (2004). During this proceeding, the Companies filed an updated version of the Henwood forecast, along with recalculations of customer savings estimates.

calculations in Exhibit RBH-6, and (4) include an explanation of the effect of the LICAP value substitution on the valuation of the existing PPAs (id. at 117-118).

In its response to RR-AG-3, the Companies stated that CEA was not aware of the specific algorithm by which Henwood quantified the value of capacity in its market price forecasts (RR-AG-3). The Companies performed the requested analysis, making several assumptions, which the Companies identified in their response to RR-AG-3 (id.). The Companies indicated that the analysis results in a decrease in the percent reduction of above-market costs from 10.97 percent to 10.68 percent (id.).

In his supplemental record request, the Attorney General asked NSTAR Electric (1) to indicate whether the Companies or CEA had contacted the publishers of the Henwood forecast to determine what LICAP values were included in the Henwood forecast, and to provide the response, or to contact the publishers to obtain the information, (2) to provide a detailed explanation of how LICAP values are included in the Henwood forecast, including a signed statement from an employee of the publisher, and all workpapers, etc., (3) to supplement RR-AG-3 based on the information above, and (4) to answer several questions on clearing price by zone values and conversion of per kilowatt values to per KWH values (Attorney General supplemental record request at 1).

In his Appeal, the Attorney General argues that the Department should allow the Companies to respond to the supplemental record request (Appeal at 2). The Attorney General argues that the Companies' response to RR-AG-3 simply reiterated testimony at the evidentiary hearing, that the witness did not know how Henwood quantified the capacity value in its

market price forecasts (id.). The Attorney General argues that the response did not adequately explain the assumptions made, and states that the Companies did not object to further explaining the assumptions made in their response to RR-AG-3 (id. at 3). According to the Attorney General, the LICAP prices implemented by ISO New England Inc.("ISO-NE") will add a significant cost to the Companies' customers, and the Department is obligated to make a determination that the proposed PPA restructuring mitigates transition costs and results in just and reasonable rates (id.). The Attorney General asserts that without the opportunity to fully understand all components of the Companies' economic analyses, the Department will not be able to determine whether the Companies' rates are just and reasonable (id.). The Attorney General therefore urges the Department to overturn the Hearing Officer Ruling and allow the Companies to answer the supplemental record request (id.).

On December 14, 2004, NSTAR Electric filed a response to the Attorney General's Appeal ("NSTAR Electric Response"). NSTAR Electric argues that it has already answered the supplemental record request, and therefore the Department should dismiss the Appeal as moot (NSTAR Electric Response at 1). NSTAR Electric argues that it responded to RR-AG-3 in precisely the manner as was stated on the record, that CEA made certain assumptions to preform the analysis as requested by the Attorney General (id. at 5). NSTAR Electric contends that it was clear from the transcript that the Companies and CEA did not have the details of the mechanics underlying the Henwood forecast's capacity calculations, and that the witness would need to make some assumptions to perform the analysis (id. at 6). NSTAR Electric further states that to prepare its response to RR-AG-3, it contacted the publisher of the

Henwood forecast, and was not provided with the specific method by which the forecast quantifies capacity values, because the specific forecast methodology is proprietary and constitutes a significant competitive and strategic asset to the publisher (id. at 6-7). NSTAR Electric concludes that given the fact that the Companies responded in full to the record request, and the Appeal alleges no abuse of discretion by the Hearing Officer, the Department should dismiss the Attorney General's Appeal (id. at 8-9).

The Department has reviewed the original record request posed by the Attorney General, the NSTAR Electric response, and the Attorney General's supplemental record request, and finds that the Hearing Officer did not abuse her discretion in denying the supplemental record request. The supplemental record request asked for additional, specific information to be provided after the close of the record in this matter. The proper manner to supplement a closed record is to file a Motion to Reopen the Record. 220 C.M.R. § 1.11(8). In addition, the Companies' testimony that it did not have the information sought by the Attorney General was confirmed in the response to RR-AG-3. Responses to record requests are written substitutes to oral answers where the fault of memory or complexity of a subject precludes a responsive answer by the witness in the hearing (Ground Rules at ¶ 4). Here, the witness did not forget; the witness did not have the details of the mechanics underlying the Henwood forecast's capacity calculations, and confirmed that in his response to the record request. The Companies made a good faith effort to respond to the record request, and the Hearing Officer determined within her discretion that the Companies were responsive.

Therefore, the Department affirms the decision of the Hearing Officer, and denies the Appeal of the Attorney General.

IV. MOTION TO STRIKE

A. Introduction

On December 20, 2004, NSTAR Electric filed a Motion to Strike ("Motion to Strike") certain information attached to the Attorney General's reply brief. The information consists of four appendices, which the Attorney General states support his arguments in his initial brief regarding the effect of LICAP on customer savings. In its Motion to Strike, NSTAR Electric argues that the presentation of extra-record evidence is an unacceptable tactic and potentially prejudicial to the rights of other parties, even if the evidence is ultimately excluded (Motion to Strike at 2, citing Boston Gas Company, D.P.U. 88-67, Phase II at 7 (1989)). According to the Companies, because the appendices are record evidence, presented after the close of the record, and have not been supported by a witness nor subject to cross-examination, they should be stricken or given no weight (id.).

NSTAR Electric questions the accuracy of the appendices. NSTAR Electric argues that the Attorney General's calculations are based on faulty logic and false premise (id. at 3). Specifically, NSTAR Electric contends that the Attorney General improperly double counts the effect of inflation on the LICAP rates, and that the Attorney General did not properly convert capacity prices to dollar-per-KWH-hour values (id. at 3-4).

On December 22, 2004, the Attorney General filed a reply to the Motion to Strike ("Reply"). In his Reply, the Attorney General contends that the Department should not strike

the appendices, but should give them equal weight with other information provided in this proceeding (Reply at 1). The Attorney General maintains that the appendices are not extra-record evidence, because they are based on record evidence provided by the Companies, and can be used to illustrate the potential value of LICAP not captured in the Henwood forecast (id.).

The Attorney General further argues that appendices pertaining to other related proceedings are appropriately included because the records for those proceedings are incorporated by reference into this proceeding (id.). Regarding the Companies' contention that the calculations are flawed, the Attorney General contends that he was forced to explore the issue of LICAP by making a record request because he received the Henwood update too late in the proceeding (id. at 3). Finally, the Attorney General argues that it is disingenuous for the Companies to claim that the appendices are based on faulty assumptions when he was using the best available record evidence (id.).

B. Ruling

The Department's Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. Machise v. New England

Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); D.P.U. 88-67 (Phase II) at 7; Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

The Department's precedent is clear on presentation of extra-record evidence attached to a brief. "A party's presentation of extra-record evidence to the fact-finder long after the record has closed and after all briefs have been filed is an unacceptable tactic, potentially prejudicial to the rights of other parties even when the evidence is ultimately excluded. Facts or allegations of facts, once learned, cannot readily be unlearned." Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989). While the Attorney General may have drawn the data for his analysis from facts on the record, the synthesis provided by the Attorney General's attachments to his reply brief is new, and outside the record of this matter. The synthesis provided by the Attorney General relied on data and assumptions that have not been properly tested for accuracy in the adjudicatory process; nor have the Attorney General's conclusions been tested for their validity. With this lack of probative support, this material is not the kind of information that the Department can rely on to make its decision in this proceeding. Therefore, the Department grants the Motion to Strike of NSTAR Electric and hereby strikes the attachments to the Attorney General's reply brief from the record in this matter.

V. STANDARD OF REVIEW

An electric company that seeks to recover transition costs must take efforts to mitigate those costs to the maximum extent possible. G.L. c. 164, §§ 1G(d)(1) and (2). As part of its mitigation efforts, the company must make a good faith effort to renegotiate any above-market power purchase contracts. Id. If a negotiated contract buyout or other modification to the

terms and conditions of such contract is likely to achieve savings to the ratepayers and is otherwise in the public interest, the Department may allow the company to recover the remaining amounts in excess of market value associated with the contract in the transition charge. G.L. c. 164, §§ 1G(b)(1)(iv) and 1G(d)(2).

In determining whether to approve a power contract buyout, buy-down, or renegotiation, the Department has applied its standard of review for settlement agreements, i.e., a standard of reasonableness. See e.g., Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34, at 21 (2002); Cambridge Electric Light Company, D.T.E. 01-94, at 7 (2002); Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Boston Edison Company, D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company, D.T.E. 99-56, at 7-8 (1999); Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 6 (2004). The Department must review all available information to ensure that the agreement is in the public interest. See e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993). In determining whether a contract amendment or termination is in the public interest, the Department has considered whether the termination is consistent with a company's approved restructuring plan. In Boston Edison Company, D.P.U./D.T.E. 96-23, at 46-47 (1998), the Department found that the Company's restructuring settlement, which provided for the buyout of above-market purchase power obligations, was consistent or substantially complied with the Electric Industry

Restructuring Act (the "Act")[5]. In Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.P.U./D.T.E. 97-111, at 90 (1998), the Department found that Commonwealth's restructuring plan, which provided for the buyout of above-market purchase power obligations, was consistent or substantially complied with the Act.

VI. THE AUCTION PROCESS AND THE NEA RESTRUCTURING

A. Overview

NSTAR Electric proposed to amend and restructure its four existing PPAs with NEA. NSTAR Electric has four PPAs to purchase power from the NEA generating facility located in Bellingham, Massachusetts: (1) the Boston Edison/NEA-A PPA ("NEA-A") dated April 1, 1986, for 46.6 percent of the generation output of the facility; (2) the Boston Edison/NEA-B PPA ("NEA-B") dated January 28, 1988, for 28.9 percent of the generation output of the facility (but is capped at a specific number of megawatts ("MW") not to exceed 68 MW in the summer and 92 MW in the winter); (3) the Commonwealth/NEA-1 PPA ("NEA-1") dated November 26, 1986, for 8.6 percent of the generation output of the facility; and (4) the Commonwealth/NEA-2 PPA ("NEA-2") dated August 15, 1988, for 7.2 percent of the generation output of the facility (Exh. NSTAR-GOL at 11-12). The NEA generating facility is a gas-fired electric and steam generation plant composed of two gas turbines, two heat-recovery steam generators and one steam turbine (id. at 12). The unit is rated at 264.4 MW in the summer and 327.1 MW in the winter (id.).

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[5] St. 1997, c. 164.

The terms of the NEA-A, NEA-1, and NEA-2 PPAs run through September 15, 2016, while the term of the NEA-B PPA runs through September 15, 2011 (id.). The pricing provisions of the NEA PPAs vary by contract ranging from fixed payments per KWH under NEA-A, NEA-B, and NEA-2 to a combination of fixed and variable payments linked to the price of fuel oil under NEA-1 (id.).

B. The Auction Process

NSTAR Electric proposes to restructure the existing NEA PPAs as a result of a PPA divestiture plan that it initiated in 2003 ("2003 Auction") (Exh. NSTAR-RBH at 26). NSTAR Electric stated that its auction process was designed to be equitable and structured to maximize the mitigation of transition costs associated with its 24 PPAs[6] (id. at 7). NSTAR Electric stated that 24 PPAs were subject to its auction process (id. at 4). CEA was selected to assist in the divestiture of these PPAs (Exh. NSTAR-1, at 3; Exh. AG- 1-3 [D.T.E. 04-60]).

Following NSTAR Electric's October 1, 2003 announcement of the sale of its PPAs, an early interest package ("EIP") was sent to approximately 90 potential bidders (Exh. NSTAR-RBH at 10). The EIP included an early interest letter, a confidentiality agreement, and a request for qualifications (id.; Exh. NSTAR-RBH-3). As a condition to receive further information and to be considered "Qualified Bidders," bidders were required to execute a confidentiality agreement and submit a completed qualifications package, respectively

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[6] The 2003 Auction included PPAs held by Boston Edison, Commonwealth Electric, and Cambridge Electric Light Company. For a more detailed description of the 2003 Auction, see D.T.E. 04-60, at 8-11.

(Exh. NSTAR-RBH at 11-13). By November 15, 2003, there were 25 Qualified Bidders (id. at 11-12).

On October 17, 2003, the due diligence stage began as each Qualified Bidder received an offering memorandum ("OM") and an entitlement transfer agreement ("ETA") (id. at 14).[7] NSTAR Electric stated that this was designed to ensure that each bidder received the information necessary to timely and equitably complete its evaluation of the PPAs (id. at 8-9). Additionally, each Qualified Bidder was assigned a specific CEA staff member for individualized assistance (id. at 9; Tr. at 43).

On November 6, 2003, bid instructions and a bid form were made available to all Qualified Bidders (Exhs. NSTAR-RBH at 15; NSTAR-RBH-4). The bid form, which set November 21, 2003 for the receipt of bids, included two pricing options: (1) a lump-sum payment from the bidder to NSTAR Electric or from NSTAR Electric to the bidder; and (2) energy-only pricing, i.e., the price per megawatt-hour a bidder would pay to NSTAR Electric for energy delivered under the specific PPA (Exhs. NSTAR-RBH at 15-17; NSTAR-RBH-4; DTE 1-12).

On December 3, 2003, NSTAR Electric received twelve bids, which included two bids for the entire PPA portfolio and one bid for all but one of the PPAs (the latter three bids constituting the "Portfolio Bids"), and including the NEA bid[8] (Exh. NSTAR-RBH at 17).

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[7] The OM included a detailed description of each PPA, an overview of the bidding process, and the preliminary terms of sale (Exh. NSTAR-RBH at 14).

[8] The initial NEA bid was nonconforming; however, the final NEA bid was conforming (continued…)

From December 2003 through March 2004, the Companies and CEA evaluated the bids and continued to negotiate the specific aspects of each bidder's proposed financial and contractual terms, with the objective of identifying those combinations of bids that offered the greatest mitigation of transition costs (id. at 18). This process of ongoing discussions and negotiations regarding the payment stream and transaction structure resulted in an agreement between NSTAR Electric and NEA to restructure the NEA PPAs (id.).

To perform its evaluation of the bids, CEA separately valued each PPA to determine the total cost for the energy and capacity over the term of the agreement (id. at 18-19; Exhs. NSTAR-RBH-5; NSTAR-RBH-6; DTE 1-9). The above-market costs were calculated as the present value of the difference between the expected total cost under the PPA terms and the market value based on the Henwood forecast (Exh. NSTAR-RBH at 19). As a result of that evaluation, CEA and NSTAR Electric determined that the NEA bid would create the greatest reduction in NEA-related above-market costs (id. at 22-23; RR-DTE-3, Att. DTE-3(d) and Att. DTE-3(h)). In addition, only NEA provided a final binding bid for the NEA PPAs (Exhs. NSTAR-RBH at 28; NSTAR-RBH-5; Tr. at 40).

C. The NEA Restructuring

The NEA Restructuring, which is the result of the 2003 Auction, consists of five agreements: the Execution Agreement (as amended by the First Amendment[9]) between

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[8](…continued)
(Tr. at 40-41).

[9] The First Amendment of the Execution Agreement increased the maximum credit that
(continued…)

NSTAR Electric and NEA, and four amended and restated PPAs consisting of two PPAs each between (1) Boston Edison and NEA and (2) Commonwealth and NEA (Exh. NSTAR-GOL at 12-13). The Execution Agreement establishes the overall terms of the entire restructuring transaction, while the amended and restated PPAs replace the four existing PPAs with new delivery and pricing provisions (id. at 13). Under the new delivery provisions, NSTAR Electric resells all delivered energy and capacity received from NEA to the market and pays the proceeds of that sale to NEA, with quantity of output delivered and length of contract terms consistent with the existing PPAs (id.). The principal difference in the delivery provisions with the amended and restated PPAs is that under the restructured agreement, NEA may satisfy its delivery obligation to NSTAR Electric from any source of supply available to NEA (id.).

Under the NEA Restructuring, the total contract costs that the Companies will pay to NEA consist of three categories: (1) market value of products (energy and capacity payments); (2) support payments; and (3) the closing payment (id. at 15-18). The energy and capacity revenues received by NSTAR Electric are equal to those paid by NSTAR Electric to NEA, which means that NSTAR Electric's customers are not affected by the price of the power products (id. at 15). The support payment represents a discounted valuation of the out-of-market costs under the pricing provisions of the existing PPAs (id. at 16; Exh. DTE 2-8).

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[9](…continued)
can flow from NEA to customers for higher natural gas prices under the mark-to market provisions of the Execution Agreement, from $27.6 million to $80 million (Exh. NSTAR-2, at ¶¶ 2-4, amending Section 5.5(b)).

Regarding the closing payment, the original bid placed by NEA in the 2003 Auction was on condition that the deal would be consummated on April 1, 2004; however, due to the amount of time required for performing accounting and tax treatment and internal approvals from the parent corporations, it was not possible to close the transaction by April 1, 2004 (Exh. NSTAR-GOL at 17). Therefore, in order to maintain the value of the transaction to each party, NEA and NSTAR Electric established the closing payment methodology that preserves the economics of the transaction as though the transaction closed on April 1, 2004 (id. at 13). The closing payment has two components. The first component is the closing date amount, which calculates the difference between what NSTAR Electric actually paid under the existing PPAs and what it would have paid under the amended and restated PPAs (id. at 17-21; Exhs. NSTAR-GOL-3; NSTAR-2).[10] The second component is the adjusted bid price amount, which accounts for changes in wholesale energy market prices (Exhs. NSTAR-GOL at 18, 21-24; NSTAR-GOL-4).[11] The adjusted bid price amount is determined based on the New

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[10] The Companies updated the closing date amount of $53.61 million and the adjusted bid price amount of negative $72.08 million, resulting in a closing payment amount to be paid from NEA to NSTAR Electric of $18.47 million ($72.08-$53.61 million equals $18.47 million) (NSTAR Electric Reply Brief at 4).

[11] Due to recent large increases in natural gas prices, NSTAR Electric and NEA negotiated the First Amendment to the Execution Agreement to increase the cap in the adjustment level that can flow in favor of NSTAR Electric customers to $80 million from the current $27.6 million (First Amendment, ¶¶ 2-4; Exh. NSTAR-2). The revised adjusted bid price amount was negative $72.084 million as indicated in Exh. AG-1-37(b)(Supp), Att. (RR-DTE-2). The revised adjusted bid price amount is calculated to be between a positive $2.434 million and negative $80 million in the First Amendment (RR-DTE-2).

York Mercantile Exchange ("NYMEX") natural gas futures strip at the Henry Hub through the terms of the existing PPAs.[12]

According to the Companies' calculations based on the new Henwood forecast, the NEA Restructuring will result in approximately $49 million of savings to ratepayers on a net present value ("NPV") basis when compared to the present value of retaining the PPAs (RR-DTE-6).[13] The revised estimates on an NPV basis show savings for Commonwealth of approximately $76 million, with additional costs (negative savings) for Boston Edison of approximately $27 million (id.). NSTAR Electric proposed an allocation of savings between Commonwealth and Boston Edison to eliminate the additional costs for Boston Edison (id.; Tr. at 12-17). With the proposed allocation of savings, the NEA Restructuring would provide estimated customer savings of $52 million, with all $52 million allocated to Commonwealth (RR-DTE-3(d) and (h)).[14] NSTAR Electric proposed that the costs incurred under the NEA Restructuring continue to be recovered in the transition charges of Boston Edison and Commonwealth (Exh. NSTAR-GOL at 29).

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[12] The Henry Hub, located in Louisiana, is the largest centralized point for natural gas delivery in the United States. It represents the most actively traded point for United States natural gas futures markets.

[13] The Companies originally estimated that customer savings would be $191 million on an NPV basis, with approximately $126 million for Boston Edison and $65 million for Commonwealth (Exhs. NSTAR-GOL at 24; NSTAR-BEC-GOL-2; NSTAR-COM-GOL-2).

[14] NSTAR Electric explains that the total customer savings on an NPV basis before and after the allocation are not exactly equivalent because the discount rates for the payment stream for Boston Edison (6.61 percent) and Commonwealth (8.20 percent) are different (RR-DTE-3(d) and (h); RR-DTE-6).

VII. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General states that the Department should reject the Companies' petition because the Companies have failed to establish that the proposed NEA Restructuring complies with the maximum mitigation requirements of G.L. c. 164, § 1G(d)(1) (Attorney General Brief at 5; Attorney General Reply Brief at 2).

The Attorney General claims that the Companies' proposed closing payment amount, which consists of the adjusted bid price amount and the closing date amount, is subject to too many uncertainties for it to maximize the mitigation of above-market costs (Attorney General Brief at 5). First, the Attorney General maintains that the adjusted bid price will not be final until the closing date, and that such price may fluctuate greatly prior to the actual closing date due to its sensitivity to energy and natural gas prices (id. at 6). The Attorney General contends that because of the uncertainty of the adjusted bid price amount, the savings the Companies proposed are purely speculative (id.). Second, the Attorney General notes that the closing date amount is dependent on when the transaction closes (id. at 7). Because the Companies do not know when the agreement will close or how much the closing date amount will be at closing, the Attorney General asserts that the NEA PPAs are equivalent to the Companies having a "blank check" (id. at 8). Third, the Attorney General argues that Boston Edison's customers will actually pay more to NEA under the proposed amended and restated PPAs (id. at 7-8). Furthermore, the Attorney General asserts that the Companies' proposed front-loading of costs in the restructured PPAs introduces a higher level of risk that may not benefit customers (id.).

The Attorney General argues that the Companies' evaluation of the existing PPAs is flawed because the Companies failed to properly address the effect of LICAP on the value of the PPAs (Attorney General Brief at 8-10). The Attorney General argues that this failure is likely to harm customers when the LICAP mechanism is introduced, and that keeping the existing PPAs will allow the Companies to avoid paying some amount of the new LICAP rate (id. at 9, 12).[15] Therefore, the Attorney General urges the Department to reject the NEA Restructuring and delay further action until LICAP costs are established (id. at 12-13).

The Attorney General maintains that the Companies mis-valued the existing PPAs (id.). First, the Attorney General claims that even though CEA relies on the Henwood forecast, CEA does not know how capacity costs are projected in that forecast (id. at 8-9, citing Tr. at 112-113; RR-AG-3). The Attorney General claims that CEA's failure to understand such a significant component of its analysis represents a major, if not fatal, analytic shortcoming, leading to wholly inaccurate projections when CEA attempted to incorporate LICAP costs into the Henwood forecast (id.; RR-AG-3).

The Attorney General takes issue with the method the Companies used to determine the effect the LICAP prices proposed by the ISO-NE would have on the economic benefits of the NEA Restructuring (Attorney General Brief at 9; see RR-AG-3). Specifically, the Attorney General disagrees with several of the assumptions made by the Companies (Attorney General

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[15] Based on the evidence presented in the FERC LICAP proceeding, the Attorney General estimates the value of NEA capacity to be at least $118 million during the first five years of LICAP implementation (Attorney General Brief at 9, citing Exh. AG-1, Table 3, at 14). The Attorney General also states that intervenors in the FERC proceeding have recommended LICAP payments higher than those proposed by ISO-NE (id. at 12).

Brief at 10). In response to the Companies' projection, the Attorney General developed his own method for incorporating LICAP costs into the Henwood forecast (id. at 12).[16] The Attorney General argues that under his method, negative PPA values were produced (id.). The Attorney General concludes that the amended and restated PPAs are likely to cost customers when the LICAP market is introduced (id.).

The Attorney General argues that Boston Edison's NEA-B contract is no longer economic based on the most recent Henwood data, and that NSTAR Electric proposes to take a portion of the estimated savings away from Commonwealth's customers and transfer them to Boston Edison's customers (Attorney General Brief at 13, citing Tr. at 56-57). The Attorney General maintains that the Department generally rejects the subsidization of one group of customers by another (id., citing Massachusetts Electric Company, D.T.E. 95-40, at 141 (1995); Investigation into Interruptible Transportation, D.T.E. 93-141-A at 14 (1996)). The Attorney General argues that the Department should reject Boston Edison's proposed restated and amended NEA-B PPA based on the Department's precedent regarding cross-subsidization (id.).

The Attorney General maintains that in addition to requiring Commonwealth customers to pay higher transition charges, the transfer of the estimated savings conceals the underlying problem that the proposed NEA-B PPA is uneconomic (id., citing Exh. AG-1-38(a)). The

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[16] The Attorney General appended Attachments A, B, C, and D to his Reply Brief, which he contends support his argument that customer savings are negative when LICAP values are used to calculate customer savings. The Department has stricken these attachments from the record of this proceeding (see Section IV., above).

Attorney General suggests that if the Department decides the matter on overall benefits to customers, it should require that any Boston Edison mitigation incentive related to the approved NEA Restructuring should be transferred to the Commonwealth transition charge as partial compensation to Commonwealth customers (id. at 14).

B. The Companies

The Companies argue that the NEA Restructuring was arrived at after an open, competitive and vibrant auction, consistent with Department precedent, and, as a result, the NEA Restructuring will result in significant savings for the Companies' customers of $52 million on an NPV basis (NSTAR Electric Brief at 3, 8, 12). Furthermore, the Companies argue that they have demonstrated that they have met the standards established in the Act regarding the mitigation of transition costs, and that the 2003 Auction is consistent with Boston Edison's Restructuring Settlement, and Commonwealth's Restructuring Plan (id. at 3). NSTAR Electric claims that the 2003 Auction was open and competitive and, as such, resulted in maximizing the mitigation of transition costs relating to the existing NEA PPAs (id. at 8; NSTAR Electric Reply Brief at 3). The Companies maintain that they have demonstrated that the auction process ensured complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate (NSTAR Electric Brief at 8-9).

The Companies disagree with the Attorney General's claim that because of the uncertainty of the closing payment amount, the Companies have not met their requirement of maximizing the mitigation of costs (NSTAR Electric Reply Brief at 3). The Companies state

that the Department has already determined that the auction process used by the Companies meets the standard requiring that a company demonstrate that it has maximized mitigation of PPAs, and that there is no evidence to contradict that finding (id. at 3-4, citing D.T.E. 04-60; Boston Edison Company, D.T.E. 04-68 (2004)). The Companies further explain that the Attorney General has misconstrued the effect of changes in the closing payment (id. at 4).

The Companies argue that the closing payment, consisting of the closing date amount and the adjusted bid price amount, was designed to provide adjustments for changes that have occurred since the initial bid date of December 3, 2003 (id.). According to the Companies, the calculation of customer savings of $52 million includes the closing payment amount of $18.47 from NEA to NSTAR Electric (id. at 5). The Companies disagree with the Attorney General's argument that the closing date amount will be higher than the Companies' estimated amount due to a later closing date (i.e., would be $60.84 million rather than $53.61 million if the closing date were to occur on March 31, 2005) (id.). First, the Companies state they intend to close as soon as possible after the Department's Order, and there is no evidence to support the closing will occur on the last day in March 2005 (id. at 4). Second, the Companies claim the closing date amount does not materially affect the amount of savings to customers resulting from the NEA Restructuring even under the assumption that the closing date is March 31, 2005 (id. at 5). The Companies explain that there is a change in the front-end payment because of the later closing date, but that the total NPV savings do not materially change (id. at 6). The Companies point out that the Attorney General, in his Brief, incorrectly makes one

adjustment to his calculation of NPV savings without making a corresponding adjustment to reflect the decrease in payments over the balance of the transaction (id.).

Regarding the second component of the closing payment amount, the adjusted bid price amount, the Companies disagree with the Attorney General's statement that the adjusted bid price amount will not be final until the closing, and therefore savings from the NEA Restructuring are "purely speculative" (id.). According to the Companies, the adjusted bid price amount is determined based on an energy price index through the terms of the existing PPAs (id.). The Companies agree with the Attorney General that energy prices have increased, which would decrease the savings of the NEA Restructuring (id. at 7). However, the Companies further state that the decrease in savings have been substantially offset by the $60.3 million increase in the adjusted bid price amount (from NEA's bid date amount of $12.5 million to $72.8 million) (id.). Consequently, the Companies claim the adjustment to the closing date payment makes customer savings less, not more, speculative (id. at 8). Furthermore, the Companies maintain that customers are protected because of the asymmetrical band ($2.4 million maximum from NSTAR Electric to NEA compared to an $80 million maximum payment from NEA to NSTAR Electric) in the adjusted bid price amount (id.). According to the Companies, if at the time of closing, the payment from NSTAR Electric is to be greater than $2.4 million, NSTAR Electric has a contractual right not to proceed to closing (id.). Therefore, the Companies state that NEA's use of an adjusted bid price amount provides a reasonable means by which the value of the transaction can be preserved to the greatest extent possible (id.).

The Companies maintain that, on the whole, the Attorney General fails to understand how the closing payment amount is determined, as well as the manner in which it preserves the forecasted level of customer savings (id. at 2). Although the Companies agree with the Attorney General that the closing payment amount will not be calculated until closing, they disagree that the savings projections are "speculative" (id.). The Companies contend instead that the adjustment to the transaction at closing will preserve customer savings (id.).

The Companies argue that they have reasonably evaluated the economic benefits to be obtained from the NEA Restructuring (id. at 8). The Companies maintain that CEA evaluated the NEA bid and the market value of the existing PPAs based on the Henwood forecast of future electricity prices (id.). The Companies disagree with the Attorney General's contention that CEA does not know how the Henwood forecast incorporates the increased value of capacity that would result from a recently proposed ISO-NE LICAP tariff (id. at 8-11). The Companies indicate that even though CEA was not provided with the specific proprietary method by which Henwood quantifies and incorporates capacity costs in its forecast, CEA understands the approach taken by Henwood (id. at 10-11). According to the Companies, this understanding allowed CEA to make reasonable assumptions in preparing a revised Henwood forecast with LICAP costs included (id. at 10-11).[17] In addition, the Companies note that proposals for LICAP costs are currently under review and far from final (id.). The Companies contend that assumptions concerning LICAP costs are simply assumptions regarding the

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[17] According to the Companies, if LICAP costs were included in the analysis, then customer savings would be reduced from 10.97 percent to 10.68 percent (RR-AG-3).

outcome of the FERC's LICAP proceeding, which is subject to various competing proposals (id. at 10).

The Companies note that Henwood's assumptions regarding capacity costs represent a small subset of the totality of assumptions underlying the Henwood forecast (id.). The Companies further note that the purpose of using the Henwood forecast is to rely on its results without manipulating key assumptions or methodologies (id.). The Companies argue that, given the interactive nature of the model, it is inappropriate to "carve out" a narrow segment of Henwood's model as proposed by the Attorney General (id. at 9).

Finally, the Companies note that the Attorney General, the Companies, and other parties (the "Coalition") have joined together to propose major adjustments to ISO-NE's LICAP mechanism at FERC (id. at 9, citing Exh. AG-1). The Companies assert that if the Coalition's proposal is adopted, the NEA Restructuring will provide even more savings than are currently projected (id.).

The Companies argue that the proposed ratemaking treatment for the costs of the NEA Restructuring is consistent with Department precedent and should be approved (NSTAR Electric Brief at 14). NSTAR Electric states that although the NEA Restructuring provides significant savings to customers, recent changes in the forecasted market prices result in a substantial reallocation of estimated savings among the various contracts and would produce negative savings for customers of Boston Edison (NSTAR Electric Reply Brief at 13, citing Exh. AG-1-37, at 2). The Companies explain that in order to eliminate the negative effect on customers of Boston Edison, while still leaving significant savings with customers of

Commonwealth, the Companies propose to reallocate the savings as set forth in the response to RR-DTE-3 (id., citing Tr. at 61-62). The Companies argue that based on this reallocation, the vast majority of the savings are returned to the customers of Commonwealth, while holding harmless the customers of Boston Edison (id.).

NSTAR Electric disagrees with the Attorney General's assertions that the Companies' proposal provides improper benefits to Boston Edison's customers at the expense of Commonwealth's customers, and that this allocation violates the Department's rules regarding the subsidization of one group of customers by another (id., citing Attorney General Brief at 13). The Companies contend that the Attorney General's charge is inapposite to the facts of this case in which the Companies' proposal is to allow one company to share a benefit rather than to allocate the burden of a cost through a subsidy (id.).

Further, the Companies argue that unlike a rate case, in which a company's costs are allocated among customer classes, this case offers an opportunity for the customers of Commonwealth to obtain significant savings, even in the face of recent changes in the forecasted market prices for energy (id.). The Companies state that equity favors approval of the Companies' proposal because neither group of customers would be harmed, and Commonwealth's customers would obtain a substantial benefit (id., citing Eastern Enterprises/Colonial Acquisition, D.T.E. 98-128, at 84-85 (1999)). The Companies conclude that rejecting the NEA Restructuring in total is unsupportable because it would significantly harm Commonwealth's customers by denying them the benefit of significant savings while leaving Boston Edison's customers in an unchanged position (id. at 14).

VIII. ANALYSIS AND FINDINGS

A. The Auction Process

In evaluating the divestiture of generation assets, the Department first determines whether the divestiture process was equitable and structured to maximize the value of the assets being sold. Western Massachusetts Electric Company, D.T.E. 00-68, at 12 (2000). In making these determinations, the Department considers whether the company used a "competitive auction sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." See G.L. c. 164, § 1A(b)(2). The Department has relied on the auction process to also determine whether a transaction involving a non-generation asset maximizes mitigation of transition costs. See D.T.E. 04-60, at 21; D.T.E. 04-68, at 14-15; see also Western Massachusetts Electric Company, D.T.E. 01-99, at 10 (2002).

The Department notes a number of features of the Companies' 2003 Auction that highlight the competitive nature of the auction. First, a large number of parties participated in the auction: up to 90 parties were contacted initially, with 22 of those becoming Qualified Bidders and twelve Qualified Bidders eventually submitting bids (Exh. NSTAR-RBH at 10-11, 14; Tr. at 41). Next, Qualified Bidders were provided with contract and invoice data on a uniform basis, and a formal mechanism was established to permit each Qualified Bidder to obtain additional information (Exh. NSTAR-RBH at 14-17). Each Qualified Bidder was assigned a CEA representative who served as that bidder's single point of contact, allowing access to additional information while maintaining confidentiality (Exh. NSTAR-RBH at 9;

Tr. at 43). Finally, Qualified Bidders were free to bid on any combination of NSTAR Electric's 24 PPAs, in order to maximize the value of the portfolio (Exh. NSTAR-RBH at 6).

The record demonstrates that the Companies' auction process ensured complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive. Therefore, the Department finds that the auction process used was equitable and structured to maximize the value of the contracts sold. See D.T.E. 04-68, at 15; D.T.E. 04-60, at 22.

Historically, the Department has relied on responses from the market, such as bids derived from a properly structured auction, as relevant indicators of economic value. See D.T.E. 04-60, at 22; see also Cambridge Electric Light Company, D.T.E. 01-94, at 10 (2002); Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-119/126, at 19 (1999). In earlier reviews, as well as the instant proceeding, the Department has found that the Companies' auction process was structured to maximize the value of the contracts sold. See D.T.E. 04-68, at 15; D.T.E. 04-60, at 22. Accordingly, based on the foregoing, the Department finds the Companies' auction process to be consistent with the Boston Edison's Restructuring Settlement and Commonwealth's Restructuring Plan.

B. Maximization of Mitigation

When an auction process is used to divest of contractual entitlements, the marketplace has a chance to value the contracts, and any above-market component should be treated in the same manner as other divestiture costs. Boston Edison Company/Cambridge Electric Light Company, D.T.E. 98-119/126, at 29, 33 (1999). Here, the Department relies on an adequate

auction process to set the value of the PPAs. The Department has made its determination that the auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs (see Section VIII.A., above).

The Attorney General argues that the NEA Restructuring does not maximize the mitigation of the transition costs because the closing payment amount is uncertain (Attorney General Brief at 5-6). The original bid placed by NEA in the 2003 Auction was based on the deal to be consummated on April 1, 2004; however, due to the time required for accounting and tax treatment, as well as for internal approvals from the parent corporations, it was not possible to close the transaction by April 1, 2004 (Exh. NSTAR-GOL at 17). In order to maintain the value of the transaction to each party, NEA and NSTAR Electric established the closing payment method that preserves the economics of the transaction as though the transaction closed on April 1, 2004 (id. at 13). The Department finds that the closing payment mechanism is a reasonable means to adjust the transaction at closing, and the closing payment method holds both NEA and NSTAR Electrics harmless to a later closing date. The first component of the closing payment is the closing date amount, which calculates the difference between what NSTAR Electric actually paid under the existing PPAs and what it would have paid under the amended and restated PPAs (id. at 17-21; Exhs. NSTAR-GOL-3; NSTAR-2). Even if the closing date is as late as March 31, 2005, the total NPV of savings to customers does not change materially because the later closing date only accounts for the timing difference between April 1, 2004 and the date of the actual closing (Tr. at 91-94; RR-AG-1,

Att. AG-1-37 (Supp. Rev.)). The second component, the adjusted bid price amount, accounts for changes in wholesale energy market prices (Exhs. NSTAR-GOL at 18, 21-24; NSTAR-GOL-4; NSTAR-1, App. A at 432-435). The Department finds it reasonable to employ an index to adjust the bid price amount through the lives of the existing PPAs. The Department also finds that the asymmetrical band between NEA and NSTAR in the adjusted bid price amount provides a reasonable means by which to preserve the maximum value of the transaction (Exhs. NSTAR-GOL at 23; NSTAR-2, at ¶¶ 2-4, amending Section 5.5(b)). Therefore, the Department finds that even though the exact amount of the closing payment amount will not be known until the closing date, the closing payment amount mechanism will preserve customer savings, and does not invalidate the Companies' savings estimates.

The Department has made its determination that the auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders, and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs. Therefore, the Department finds that the proposed NEA Restructuring maximizes the value of the PPAs and mitigation of the transition costs.

C. Customer Savings

1. Use of LICAP Values

The Attorney General urges the Department to use LICAP values when calculating the estimated customer savings resulting from the NEA Restructuring, by including LICAP values in the Henwood forecast. The record is clear that the Henwood forecast does, in fact, incorporate capacity costs (Exh. AG-1-36(a) (Supp); Tr. at 108, 115). However, it is not clear

in what specific way the Henwood forecast incorporates the capacity costs (Tr. at 115). The Companies state that the exact methodology of the Henwood forecast is proprietary and Henwood does not disclose the methodology to its clients (NSTAR Electric Reply Brief at 10-11). The Department notes that the Companies and the Attorney General each made an attempt to incorporate LICAP costs into the Henwood forecast. The Department cannot rely on the results of the parties' input of LICAP costs into the Henwood forecast. By introducing LICAP costs into the Henwood forecast, the parties have altered the inputs and assumptions of the underlying model. This change to the inputs to the model likely will affect other elements of the Henwood forecast, producing unanticipated consequences that would call into question the validity of the results.

Moreover, the LICAP costs used by both the Companies and the Attorney General represent submissions currently under review by FERC (Exh. AG-1; Tr. at 109-110). The LICAP costs are not yet final, and there is no evidence in the record that would suggest that the exact capacity pricing mechanism proposed by ISO-NE will be approved by FERC. On the contrary, the record shows that many intervenors, including the Companies and the Attorney General, have submitted modifications to ISO-NE's proposed LICAP mechanism (Exh. AG-1). Because the outcome of the FERC proceedings is unclear, and the lack of the final LICAP costs introduces an additional level of uncertainty, the Department finds that rendering LICAP adjustments to the Henwood forecast is not appropriate at this time.

Regarding the Attorney General's recommendation that the Department delay its decision in this matter until LICAP is finalized, it is unclear when the LICAP costs will be

finalized. At present, FERC intends to have LICAP implemented in New England no later than January 1, 2006. Devon Power LLC, et al., 107 FERC ¶ 61,240 (2004). However, due to procedural and legal matters, the actual date of LICAP implementation may differ. Therefore, due to the uncertainty on the timing of the implementation LICAP, the Department finds that it would be inappropriate to delay the decision on the NEA Restructuring until LICAP is finalized.

In these proceedings, the Companies have presented the Henwood forecast as the basis for evaluation of the NEA Restructuring. The Department has already made its finding in other NSTAR Electric PPA termination proceedings that the Henwood forecast is a reasonable tool for PPA valuation. See D.T.E. 04-60, at 26; D.T.E. 04-68, at 20-21. Accordingly, the Department finds that the Companies appropriately used the Henwood forecast of electricity prices, as well as the forecast of the capacity costs, in evaluation of the NEA Restructuring.

2. Calculation of Savings

The Companies estimated customer savings by comparing the forecasted transition charges to be paid by customers if the existing PPAs were to remain in effect, with the transition charges to be paid by customers under the NEA Restructuring (Exh. NSTAR-GOL at 24). The Companies' calculations of customer savings are based on the Henwood forecast, which forecasts the future market price of electricity. The Henwood forecast is a widely-available and reasonable proxy for a forecast of the price of electricity. See D.T.E. 04-60, at 26. During the proceeding, the Department requested the Companies to provide the fall 2004 Henwood forecast and the following updated Companies exhibits: NSTAR-RBH-5,

NSTAR-RBH-6, NSTAR-BEC-GOL-2, NSTAR-BEC-GOL-3, and NSTAR-BEC-GOL-4. The savings values as noted in the Companies' initial filing have changed from approximately $191 million to approximately $49 million as a result of this update (Exhs. NSTAR-BEC-GOL-2; NSTAR-COM-GOL-2; RR-DTE-6). In addition, with the new Henwood forecast, the Boston Edison PPAs no longer provide customer savings (RR-DTE-6). However, the NEA Restructuring continues to produce total positive savings under the updated data (id.).

In this proceeding, the Companies' proposal represents a comprehensive transaction including the Execution Agreement and all four amended and restated PPAs. Each amended and restated PPA is not submitted for individual approval. Rather, each amended and restated PPA, together with the Execution Agreement, is an integral part of the restructuring of the obligations between NSTAR Electric and NEA under their power purchase arrangements. Therefore, the Department finds it appropriate to examine the entire NEA Restructuring in making a finding regarding the likelihood that the transaction will achieve savings for ratepayers. See G.L. c. 164, § 1G(d)(2)(ii).

As stated above, under the new Henwood forecast, the NEA Restructuring provides customer savings, with substantial savings estimated for Commonwealth's customers and with no savings and additional costs estimated for Boston Edison's customers. NSTAR Electric has proposed to allocate the estimated savings between Commonwealth and Boston Edison to eliminate the negative effect on Boston Edison's customers of the results of the new Henwood forecast. NSTAR Electric's allocation proposal would retain substantial savings for Commonwealth and eliminate the additional cost to Boston Edison.

In determining whether an allocation of savings is appropriate for the NEA Restructuring, the Department must consider the fairness of an allocation. In examining ratemaking treatment, the Department generally applies the principle of fairness in holding that cost responsibility should follow cost incurrence. NSTAR Electric, D.T.E. 03-121, at 46 (2004). However, the Department also has taken a broader view of fairness where competing objectives are involved. See KeySpan Energy Delivery New England, D.T.E. 04-62 (2004) (in approving a consolidated gas adjustment factor ("GAF") for three affiliated companies, the Department determined that it was appropriate for the additional costs to one company in implementing the consolidated GAF to be allocated among all three companies).

In the instant case, the Department recognizes that without the approval of the NEA Restructuring, Commonwealth's customers do not realize the full savings from the Commonwealth-specific part of the transaction. With a reasonable allocation of the savings from the overall transaction, Commonwealth's customers will recognize savings and Boston Edison's customers will not bear an economic harm. In examining the totality of the circumstances, the Department finds that it is appropriate to allocate the savings under the NEA Restructuring between Commonwealth and Boston Edison. Therefore, with an appropriate allocation of savings, the Department finds that the NEA Restructuring is likely to achieve savings for ratepayers.

NSTAR Electric has proposed an allocation that provides for annual transfers of savings from Commonwealth to Boston Edison over a ten-year period (2006 through 2015), where Commonwealth realizes a substantial amount of savings and the additional costs to

Boston Edison are eliminated (Tr. at 57-61; RR-DTE-6; Exhs. AG-1-37; AG-1-37 (Supp.)). The Department finds that NSTAR Electric's method for the allocation of savings is fair and appropriate for the NEA transaction. However, the exact amount of savings transfers will depend on the date of the closing and the amounts paid at closing. Accordingly, the Department directs NSTAR Electric to make a compliance filing within ten days following the closing date showing an updated calculation for the transfer of savings between Commonwealth and Boston Edison consistent with the method proposed in this proceeding.

The Companies propose to continue to recover the payments made under the NEA Restructuring through the variable portion of Boston Edison's and Commonwealth's respective transition charges (Exh. NSTAR-GOL at 29). The Department finds that this proposal is consistent with Boston Edison's Restructuring Settlement and Commonwealth's Restructuring Plan, and the requirements of the Act. Therefore, the Companies are permitted to recover the payments made pursuant to the NEA Restructuring through the variable portions of their transition charges. Consistent with our finding in D.T.E. 04-60, the Department will reconcile all costs associated with the NEA Restructuring in the Companies' future transition cost reconciliation filings.

Because the NEA Restructuring, with an allocation of savings, is likely to achieve savings for ratepayers and because the savings mitigate NSTAR Electric's transition costs, the Department finds that the transaction is in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii). Therefore, the Department approves the NEA Restructuring.

IX. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the petition of Boston Edison Company and Commonwealth Electric Company for approval of a Bellingham execution agreement, as amended by the first amendment, between the Companies and Northeast Energy Associates Limited Partnership, and four associated amended and restated purchase power agreements, is hereby APPROVED; and it is

FURTHER ORDERED: That Boston Edison Company and Commonwealth Electric Company's proposed ratemaking treatment relating to the Bellingham execution agreement, as amended by the first amendment, and four associated amended and restated purchase power agreements, is hereby APPROVED, subject to reconciliation and refund; and it is

FURTHER ORDERED: That Boston Edison Company and Commonwealth Electric Company shall comply with all directives contained herein.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.